



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of David Rodriguez,
Police Officer (S9999U), Woodbridge
Township

List Removal Appeal

CSC Docket No. 2018-597

ISSUED: APRIL 6, 2018

(HS)

David Rodriguez, represented by Robert K. Chewning, Esq., appeals the removal of his name from the eligible list for Police Officer (S9999U), Woodbridge Township on the basis that he falsified his preemployment application.

The appellant, a disabled veteran, took and passed the open competitive examination for Police Officer (S9999U), which had a closing date of August 31, 2016. The resulting eligible list promulgated on March 29, 2017 and expires on March 30, 2019. The appellant’s name was certified to the appointing authority on April 17, 2017. In disposing of the certification, the appointing authority requested the removal of the appellant’s name due to an unsatisfactory criminal record, an unsatisfactory driving record and the falsification of his preemployment application. Specifically, the appointing authority asserted that the appellant was charged for simple assault in violation of *N.J.S.A. 2C:12-1(a)* as a juvenile in 2000, for which the appellant pled guilty and was placed on probation for one year; simple assault in violation of *N.J.S.A. 2C:12-1(a)* in 2004, which was dismissed; riot in violation of *N.J.S.A. 2C:33-1(b)*, disorderly conduct in violation of *N.J.S.A. 2C:33-2(a)(1)*, terroristic threats in violation of *N.J.S.A. 2C:12-3(b)*, and resisting arrest in violation of *N.J.S.A. 2C:29-2(a)(1)* in 2008, for which the appellant ultimately pled guilty to a reduced charge of a township ordinance violation.

The appellant’s driving record reflected the following violations: careless driving on October 22, 2002; disregard of stop sign on April 18, 2003; obstructing passage on March 30, 2007; and unregistered vehicle on September 29, 2013. The appellant’s New Jersey driver’s license was suspended from September 25, 2012 to

November 24, 2012, for a violation of the Parking Offenses Adjudication Act, and his North Carolina driving privileges were suspended at the time the appointing authority initiated its background investigation. The appointing authority further asserted that in response to question 102, "Have you ever received a summons for a violation of the Motor Vehicle Laws in this or any other state?" the appellant failed to disclose the careless driving violation. Although he disclosed the disregard of stop sign, obstructing passage and unregistered vehicle summonses, he did not disclose the dispositions. In support, the appointing authority submitted the appellant's certified driver abstract, documentation from the New Jersey Automated Complaint System, police reports and portions of the appellant's preemployment application, among other documents.

On appeal to the Civil Service Commission (Commission), the appellant states that during the preemployment process, he was ordered to annual training from May 20, 2017 through June 9, 2017 in Virginia as part of his duties with the Army National Guard. He informed his interviewing officer, Lieutenant Edward Barrett, that he would be required to attend this training during the interview process. The appellant states that despite this, the appointing authority "arbitrarily" refused to allow him an opportunity to discuss his application with Lt. Barrett or amend his application despite all other candidates' having had such an opportunity. He maintains that the appointing authority determined, without any basis and prior to his return from training, that he did not meet the qualifications of a Police Officer. He requests an appointment, back pay, seniority and counsel fees and costs. The appellant also requests a hearing.

In response, the appointing authority, represented by Brett M. Pugach, Esq., contends that the appellant has demonstrated a consistent history of violent behavior requiring interference by law enforcement and points to the 2000, 2004 and 2008 charges. It states that the 2004 incident involved a victim whose injuries included a fractured eye socket, temporary loss of vision, and a laceration to the head requiring nine sutures. The 2008 offense, which the appointing authority calls the appellant's "most egregious," involved an incident in which the appellant threatened to take officers' guns and shoot them in the head. The appointing authority maintains that the appellant's charges involve serious behavior that cannot be ignored and relate adversely to the employment sought. It notes that the appellant was 25 years old at the time of the 2008 incident, which occurred nine years before he applied for the position at issue. The appointing authority also maintains that the appellant has an unsatisfactory driving record and that he failed to disclose material information concerning that record. The appointing authority adds that at a meeting on May 9, 2017, before completing the application, the appellant was advised that providing false information or failing to provide all requested information would result in immediate disqualification.

In reply, the appellant states that his time to submit the application was shortened to eight days due to his military training from May 20, 2017 to June 9, 2017 and that this was less time than other candidates had. The appellant claims that he was not given an opportunity to amend, review and explain any deficiencies in his application with Lt. Barrett though all other candidates received this opportunity. He argues that he requested this opportunity in the following e-mail on May 18, 2017 to Lt. Barrett:

I just realized after arriving to Fort Dix that there was a section in my packet I forgot to ask you about and had left blank. It's the section marked "AFFIDAVIT." I tried calling your office but there was no answer. Is it possible to stop by and fill in that portion of the packet?

Lt. Barrett did not respond. The appellant maintains that if he had been given the same opportunity to review and correct any deficiencies in his application, he would have been able to provide an accurate application. He contends that the appointing authority refused to provide him that opportunity because of his military responsibilities.

The appellant contends that the appointing authority's determination that he falsified his application was in error in that any information not provided was the result of the appointing authority's "arbitrary and capricious" decision not to accommodate his military duties and he had no intent to deceive. He states that he did not have knowledge of the summonses and/or could not remember all summonses received throughout his 17-year driving history. The appellant states that he relied on his five-year driver abstract. He also states that his alleged omissions were the result of incidents that occurred several years before he filled out his application.

The appellant also argues that his alleged criminal history does not warrant the removal of his name based on the circumstances of each incident, which the appointing authority erroneously did not consider as it chose not to allow him the opportunity to explain the incidents. The appellant notes that the only convictions in his record are for the 2000 simple assault, which occurred approximately 18 years ago when he was only 17 years old, and the 2008 township ordinance violation. He argues that based on the amount of time that has passed, he should not have been disqualified. The 2004 incident that resulted in an assault charge, which was dismissed, was over 13 years ago, and the police report indicates that the appellant was defending himself. Based on the dismissal of the charge, the time that has passed, and the fact that the appellant was defending himself, he argues that the 2004 incident does not support the removal of his name. The appellant points out that while the police report for the 2008 incident indicated serious allegations, the ultimate resolution of the incident resulted in only a conviction for a

single township ordinance violation; he thus argues that his actions did not match the charges. He also notes that the 2008 incident occurred over nine years ago.

The appellant asserts that his driving record does not provide sufficient cause to remove his name. He states that a majority of his traffic violations and failure to resolve the violations, including his license suspensions, were due to his active military duty assignments that had him out of the State and country for months and years at a time. Nevertheless, he takes all steps possible to resolve these issues when he returns from duty and/or when it is determined that there is a violation against him. For example, once he learned that his driving privileges in North Carolina had been suspended, he resolved this issue immediately and informed the appointing authority. He also notes that he has not received a traffic summons for over four years and argues that this evidences his rehabilitation.

The appellant further argues that it is important to note that his extensive military career of over 14 years as a Marine and Army National Guard member demonstrates that he possesses the integrity, character and fitness to be a successful Police Officer. He notes that he has valuable experience, having served two tours in Iraq, and has taken on a leadership role as a platoon sergeant in the Army National Guard. The appellant also argues that the appointing authority's request to remove his name was contrary to the recommendation of a current Police Officer who has served in the Army National Guard with the appellant since 2009. In support, the appellant submits his certified statement, e-mail correspondence with Lt. Barrett, and his order to report to military training, among other documents.

In reply, the appointing authority states that between May 9, 2017 and May 18, 2017, Lt. Barrett contacted the appellant to discuss his background information, including the appellant's 2008 arrest. In response to Lt. Barrett's inquiry about the 2008 arrest, the appellant provided little information and was dismissive of the incident, indicating that the police were lying in the report. The appointing authority maintains that the appellant was given the same opportunity as all applicants to complete his application and provide all necessary supporting information. In this regard, Captain Scott Kuzma certifies that the appointing authority applied the same application procedures to all applicants and gave the applicants the same amount of time to submit their completed applications. The appointing authority states that the appellant has made unsupported allegations that other candidates were allowed to amend their applications.¹ It contends that the appellant has offered no legal authority to support his assertion that he was entitled to amend his application.

¹ It is noted that the appellant offers no specifics beyond general assertions that other candidates had more time to complete their applications and were allowed to amend them.

With respect to the appellant's criminal record, the appointing authority contends that were it to disregard the appellant's pattern of violent behavior, it would evidence a severe lack of responsibility to the public to ensure the safe administration and enforcement of laws. It asserts that the appellant offers no legal authority in support of his argument that the appointing authority must provide him an opportunity to explain his criminal record before considering it as a basis for removal. Furthermore, the appellant was in fact given such an opportunity when Lt. Barrett questioned him about the 2008 incident. The appointing authority also reiterates that the appellant has an unsatisfactory driving record. In support, the appointing submits the certified statement of Capt. Kuzma.

CONCLUSION

The appellant requests a hearing in this matter. List removal appeals are treated as reviews of the written record. *See N.J.S.A. 11A:2-6b*. Hearings are granted in those limited instances where the Commission determines that a material and controlling dispute of fact exists that can only be resolved through a hearing. *See N.J.A.C. 4A:2-1.1(d)*. For the reasons explained below, no material issue of disputed fact has been presented that would require a hearing. *See Belleville v. Department of Civil Service, 155 N.J. Super. 517 (App. Div. 1978)*.

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C. 4A:4-6.1(a)6*, allows the Commission to remove an eligible's name from an eligible list when he has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process.

N.J.S.A. 11A:4-11 and *N.J.A.C. 4A:4-4.7(a)4* provide that an eligible's name may be removed from an eligible list when an eligible has a criminal record which includes a conviction for a crime which adversely relates to the employment sought. The following factors may be considered in such determination:

- a. Nature and seriousness of the crime;
- b. Circumstances under which the crime occurred;
- c. Date of the crime and age of the eligible when the crime was committed;
- d. Whether the crime was an isolated event; and
- e. Evidence of rehabilitation.

The presentation to an appointing authority of a pardon or expungement shall prohibit an appointing authority from rejecting an eligible based on such criminal conviction, except for law enforcement, correction officer, juvenile detention officer, firefighter or judiciary titles and other titles as the Chairperson of the Commission or designee may determine. Additionally, pursuant to *N.J.S.A. 11A:4-10*, an

appointing authority may only question an eligible for a law enforcement, firefighter or correction officer title as to any arrest. It is noted that the Appellate Division of the Superior Court remanded the matter of a candidate's removal from a Police Officer eligible list to consider whether the candidate's arrest adversely related to the employment sought based on the criteria enumerated in *N.J.S.A. 11A:4-11*. See *Tharpe v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992).

Further, it is well established that municipal police departments may maintain records pertaining to juvenile arrests, provided that they are available only to other law enforcement and related agencies, because such records are necessary to the proper and effective functioning of a police department. *Dugan v. Police Department, City of Camden*, 112 *N.J. Super.* 482 (App. Div. 1970), *cert. denied*, 58 *N.J.* 436 (1971). *N.J.S.A. 2A:4A-48* provides that a conviction for juvenile delinquency does not give rise to any disability or legal disadvantage that a conviction of a "crime" engenders. However, the Commission can consider the circumstances surrounding an eligible's arrests, the fact that the eligible was involved in such activities and whether they reflect upon the eligible's character and the eligible's ability to perform the duties of the position at issue. See *In the Matter of Tracey Shimonis*, Docket No. A-3963-01T3 (App. Div. October 9, 2003). Thus, the appellant's juvenile arrest records were properly disclosed to the appointing authority when requested for purposes of making a hiring decision.

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C. 4A:4-6.1(a)9*, allows the Commission to remove an eligible's name from an eligible list for other sufficient reasons. Removal for other sufficient reasons includes, but is not limited to, a consideration that based on a candidate's background and recognizing the nature of the position at issue, a person should not be eligible for appointment. Additionally, the Commission, in its discretion, has the authority to remove candidates from lists for law enforcement titles based on their driving records since certain motor vehicle infractions reflect a disregard for the law and are incompatible with the duties of a law enforcement officer. See *In the Matter of Pedro Rosado v. City of Newark*, Docket No. A-4129-01T1 (App. Div. June 6, 2003); *In the Matter of Yolanda Colson*, Docket No. A-5590-00T3 (App. Div. June 6, 2002); *Brendan W. Joy v. City of Bayonne Police Department*, Docket No. A-6940-96TE (App. Div. June 19, 1998). *N.J.A.C. 4A:4-6.3(b)*, in conjunction with *N.J.A.C. 4A:4-4.7(d)*, provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his name from an eligible list was in error.

A review of the record indicates that the appointing authority's request to remove the appellant's name from the subject eligible list based on his criminal record was justified. In this regard, the appellant pled guilty to simple assault as a juvenile in 2000, was charged with simple assault in 2004, and received various

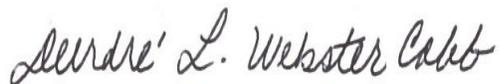
charges in 2008 for which he pled guilty to a township ordinance violation. The appellant was an adult at the time of the last two incidents. Although his military service is commendable, the Commission is unable to accept such service as evidence of rehabilitation given that the last two incidents occurred during his military career. As such, the appellant's multiple negative interactions with law enforcement, though they did not result in criminal convictions, relate adversely to the employment sought. In addition, the appellant's driving record reflects violations in 2002, 2003, 2007 and 2013; the suspension of his New Jersey driver's license in 2012 for violating the Parking Offenses Adjudication Act; and the suspension of his North Carolina driving privileges, which was not resolved until after the appellant's name was certified to the appointing authority. As such, the appellant's driving record revealed a pattern of disregard for the motor vehicle laws as of the August 2016 examination closing date, behavior that is incompatible with the duties of a law enforcement officer. *See Joy, supra*. Such conduct is indicative of his exercise of poor judgment, which is not conducive to the performance of the duties of a municipal Police Officer. In this regard, it is recognized that a municipal Police Officer is a law enforcement employee who must enforce and promote adherence to the law. Municipal Police Officers hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and the image of utmost confidence and trust. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also, In re Phillips*, 117 N.J. 567 (1990). The public expects municipal Police Officers to present a personal background that exhibits respect for the law and rules. Accordingly, the appellant's unsatisfactory criminal and driving records provide sufficient bases to remove the appellant's name from the subject eligible list. As such, it is unnecessary to determine whether his name could be removed on the basis of falsification of the preemployment application.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 4TH DAY OF APRIL, 2018



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